

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

In the Matter of

**COMPUTER RESERVATION SYSTEM
(CRS) REGULATIONS**

)
)
) **Dockets** **OST-97-2881**
) **OST-97-3014**
) **OST-98-4775**
) **OST-99-5888**
)

**REPLY AND CONTINGENT MOTION FOR LEAVE TO FILE
OF NORTHWEST AIRLINES, INC.**

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Dated: December 13, 2002

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**REPLY AND CONTINGENT MOTION FOR LEAVE TO FILE
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Northwest Airlines, Inc. (“Northwest”) strongly disagrees with the Air Carrier Association of America (“ACAA”) that the Department should revise the current provision on sale of marketing and booking data in Section 255.10(a) of the Computer Reservations System (“CRS”) rules before the comprehensive CRS rulemaking proceeding is completed. Resolving any individual CRS issue(s) before the entire CRS rulemaking is completed would be inefficient and ill-advised. The Department has rejected similar requests for immediate action on Section 255.10(a) and should do so again.¹

¹ ACAA responded to the petition for extension of the CRS comment deadlines and sunset date on December 4, 2002, the same date on which the Department’s December 2 decision to extend the comment dates was published in the Federal Register. As a result, Northwest believes ACAA’s request is moot. Nevertheless, Northwest is filing this reply because ACAA asked for immediate action on Section 255.10(a) “even if the Department decides to provide any additional time for submission of comments” in the CRS rulemaking. ACAA Response at 2. To the extent necessary, Northwest requests leave to reply to ACAA’s December 4 response. Northwest’s reply will provide a more complete record on which the Department can base its decision on ACAA’s request and will not prejudice any party or delay the CRS rulemaking proceeding.

In support of its position, Northwest states as follows:

1. The Department Should Not Act Piecemeal on CRS Issues

ACAA's request for immediate action on Section 255.10(a) should be rejected because it is at odds with the Department's consistent refusal to take immediate action on individual issues while the Department's comprehensive CRS rulemaking proceeding is pending.² When it issued the CRS Notice of Proposed Rulemaking ("NPRM") less than one month ago, the Department reaffirmed the value of using informal rulemaking proceedings that give all parties "a fair opportunity to present their evidence and policy and legal arguments and will enable us to resolve the issues rationally and efficiently." 67 Fed. Reg. 69366, 69369 (November 15, 2002). In its NPRM, the Department once again rejected the requests of several parties who had urged the Department to resolve some CRS issues before its completion of the entire rulemaking proceeding. Instead, the Department "determined that it would be more efficient for us to consider all issues in this proceeding rather than decide issues piecemeal." *Id.*

Now that the Department is moving ahead with the CRS rulemaking and has established deadlines for comments and reply comments, it would be counterproductive to act on any CRS issue on a piecemeal basis or outside the context of the comprehensive rulemaking.

2. Immediate Revision of Section 255.10(a) Would Be Ill-Advised

Revising Section 255.10(a) now, as ACAA proposes, would also be unwise because it would deny parties a full and fair opportunity to address ACAA's proposed

² See, e.g., 67 Fed. Reg. 14846, 14846, 14849 & 14851 (March 28, 2002); 66 Fed. Reg. 17352, 17354 (March 30, 2000).

revision of Section 255.10(a), deprive the Department of the full record it needs to assess the ramifications of ACAA's proposal and preclude consideration of other alternatives. In its CRS NPRM, the Department recognizes the importance of securing and considering detailed cost/benefit data before deciding whether restrictions on the availability of CRS marketing and booking data should be adopted, invites commenters to submit alternative proposals and raises the possibility of approaches besides those outlined in the NPRM.³ Immediate modification of Section 255.10(a) would foreclose consideration of such data and alternatives.

Conclusion

To the extent ACAA's request for immediate modification of Section 255.10(a) is not already moot, the Department should reject the request and instead consider ACAA's proposed revision to that provision in the comprehensive CRS rulemaking proceeding.

Respectfully submitted,

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³ 67 Fed. Reg. at 69404.

CERTIFICATE OF SERVICE

A copy of the foregoing Reply of Northwest Airlines, Inc. was served by first class mail, or a more expeditious means, on all parties of record in the relevant dockets as shown below:

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